

June 2, 2005

Chuck Robinson
Management Analyst
City Manager's Office
City of Walnut
P.O. Box 682
Walnut, CA 91789

Re: Your Request for Informal Assistance
Our File No. I-05-097

Dear Mr. Robinson:

This letter is in response to your request for informal assistance on behalf of the City of Walnut regarding the campaign provisions of the Political Reform Act (the "Act").¹

QUESTIONS AND DISCUSSION

1. Are there contribution or expenditure limitations on independent expenditures and independent expenditure committees?

The Act does not generally limit contributions or expenditures in connection with local elections or in connection with making independent expenditures. The Act imposes limits on contributions to candidates for elective state office and on contributions to committees that make contributions to candidates for elective state office (sections 85301-85303), and contains voluntary expenditure ceiling provisions for candidates for elective state office. (Sections 85400-85403.) Section 85501 further states that a controlled committee of a candidate may not make independent expenditures and may not contribute funds to another committee for the purpose of making independent expenditures to support or oppose candidates. Also see section 85312 and regulation 18531.7 regarding member communications. We have enclosed a chart of Proposition 34

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c).)

provisions that affect contributions and expenditures made in connection with local elections.

2. May the city adopt more stringent regulations relating to contribution limits or limits on independent expenditures, or could that potentially be unconstitutional?

Nothing in the Act prohibits a local jurisdiction from adopting its own rules limiting contributions to or expenditures by candidates and committees active in the jurisdiction provided those rules do not conflict with the Political Reform Act. (Section 81013.) In addition, a local jurisdiction may enact its own campaign reporting rules as long as those rules are imposed only on candidates and committees active in the jurisdiction and do not prevent those candidates and committees from complying with the Act's reporting requirements. (Section 81009.5.) Because the Commission's authority is limited to the provisions of the Act, we recommend you consult your city attorney or the Attorney General on constitutional issues that may arise in connection with any local limitations you are considering.

3. Is a mass mailing opposing a candidate considered an independent expenditure?

“‘Independent expenditure’ means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.” (Section 82031.)

A mailing or other communication opposing a candidate being voted on in an election can be an independent expenditure. However, communications by a candidate which oppose his or her opponent generally are not considered to be independent expenditures. In addition, there may be circumstances when a communication opposing a candidate, if funded by a third party “at the behest of” the candidate's opponent, would be considered a contribution to the opponent and not an independent expenditure. (Section 82015; regulation 18215.) Enclosed are copies of regulation 18225.7, which defines the phrase “made at the behest of,” and *In re St. Croix* (2005) 18 FPPC Ops. 1.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Carla Wardlow
Division Chief
Technical Assistance Division

Enclosure
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